(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1726 of 1999

APPELLANT : RAGHU S/O HARI,
Aged about 20 years, resident of
Panaraguda, Koraput, Orrisa.

V/S

RESPONDENT : THE STATE OF M.P.

Present :
Ms. Sunita Jain, amicus curiae on behalf of the appellant.
Mr. Arun Sao, GA for the State/respondent.

ORAL JUDGMENT
(21.08.2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 22nd February 1999 passed in Special Case No. 53/98 whereby learned Special Court, Bastar has convicted the appellant Raghu under Section 20 B(1) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act (for brevity 'the Act'), and sentenced to undergo R.I. of three years and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. of six months.

2. At the outset learned counsel for the State submitted that during pendency of this appeal the appellant has already been

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

released from jail after undergoing the jail sentence imposed on him by the impugned judgment.

3. Notice issued by this Court to the appellant could not be served on him and it has returned unserved with a report that the appellant does not reside in the address given in the notice. In these circumstances, Ms. Sunita Jain was appointed as amicus curiae to represent the appellant and argue this appeal on his behalf in his absence.

4. Ms. Sunita Jain, learned amicus curiae submits that the appellant has been prosecuted on the basis of recovery of 10 kg of ganja vide Ex.P/14 from possession of the appellant while he was traveling in a bus on 31st December 1997. She submitted that at the time of incident nine persons were alighted from the bus and the alleged recovery proceedings were held in the police station. She further submitted that the independent witnesses were present in the bus, however, their statements were not recorded and there is manipulation with respect to time of the incident in all the documents proved by the investigating officer T.S. Thakur (PW-5), which makes the whole investigation doubtful. The contraband was seized on 31.12.1997, however, samples of the same were sent to Forensic Science Laboratory on 31.1.1998 and there is no explanation for the delay.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	5. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court. 6. I have heard learned counsel for the parties and perused the material available on record. 7. Briefly stated case of the prosecution is that on 31.12.1997 on a secret information that certain persons are carrying ganja in a State Transport Bus, the investigating officer recorded the information and thereafter the bus was raided by a team of police persons in the presence of witnesses. With the consent of the driver and the conductor of the bus, the bus was searched and during search the appellant who was sitting in the bus with luggage between his legs, was interrogated. On search of the bag which was possessed by the appellant, 10 kg of ganja was recovered. Thereafter, samples of the contraband seized were sent for chemical examination to FSL and after examination it was confirmed that it was ganja. After completing investigation charge sheet was filed. 8. Conviction of the appellant is based on the statements of PW-5 T.S. Thakur who has narrated the procedure adopted by him during investigation and from perusal of the statement of this witness, it is found that after receiving secret information the bus was raided near octroi situated near police station. Before effecting search the raiding party gave their own search and thereafter the	

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appellant was informed about his right that if he desires, he may be searched in the presence of any Magistrate or gazetted officer and only after obtaining consent of the appellant, his bag was searched, in which 10 kg of ganja was found. After going through the statement of this witness this Court is satisfied that mandatory provisions of the Act have been duly followed by the investigating officer and the same have been proved by him in his Court statement, which is also substantiated by the documents proved by him.

9. The version of this witness is duly corroborated by the statement of Ramal Singh (PW-3) driver of the bus, who has stated that on the date of incident he was driver of the bus, the bus was intercepted by the police, nine passengers were interrogated and on search of their bags narcotics was found in their possession. The panch witness Narayan Singh (PW-2) in whose presence search and seizure were affected, has stated that he recognizes Raghu and from his possession 10 kg of ganja contained in a plastic bag, which was held by the appellant, was seized. The appellant was traveling in the bus. He also admitted his signature over the documents of Exs.P/1 to P/6 and P/8 to P/10.

10. As for the arguments of learned counsel for the appellant that there is overwriting in the time of incident in all the documents proved by the investigating officer, the I.O. has admitted the overwriting, however, he has explained that the

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मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

mistake crept in inadvertently and the same was subsequently, corrected. Even otherwise, it is not case of the appellant that the investigating officer had any ill will against the appellant, as a result of which he was framed in the crime in question. Therefore, minor discrepancy such as overwriting in the timing of incident or not forwarding the contraband for chemical analysis to FSL promptly, will not vitiate conviction of the appellant considering the fact that raid was conducted only after getting a credible secret information that number of persons were traveling in the bus with ganja and subsequently, it was established to be true as on search not only from the appellant but from other eight persons also the contraband was seized.

11. In the result, the appeal preferred by the appellant is sans ~~of~~ merits, the same is liable to be dismissed and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge

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